

**IN THE COURT OF APPEAL OF TANZANIA  
AT DAR ES SALAAM**

**( CORAM: RUTAKANGWA,J.A., LUANDA,J.A. And MJASIRI,J.A. )**

**CIVIL APPEAL NO. 100 OF 2007**

**PIUS KUHANGAIKA & TWO OTHERS..... APPELLANTS**

**VERSUS**

**COWI CONSULT (T) LTD.....RESPONDENT**

**(Appeal from the decision of the High Court of Tanzania  
at Dar es Salaam)**

**(Shangwa, J.)**

**Dated 14<sup>th</sup> day of April, 2004**

**in**

**Civil Revision No. 8 of 2004**

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**RULING OF THE COURT**

**9<sup>th</sup> February, & 20<sup>th</sup> March,2009**

**LUANDA, J. A:**

This appeal was scheduled for hearing on 9/2/2009. However, three days prior to that date, Ms. Fatma Karume learned counsel for the respondent raised a preliminary objection, a notice of which was duly given as provided under Rule 100 of the Court of Appeal Rules, 1979 (hereinafter referred to as the Rules). The objection raised touches on the propriety of the order that the dates contained therein and that in the ruling differ. So, we are bound to determine that matter first.

It is Ms.Fatma Karume's submission that there is a discrepancy as to the date of the order and the ruling. She went on to say the ruling was handed down on 14/4/2005 while the order is dated 14/4/2007. That contravenes the mandatory provisions of Order XX, Rule 7 of the Civil Procedure Code, Cap 33 R.E. She went further to say the appellants were very much aware of the anomaly hence, the filing of a supplementary record. It is her contention that the action taken by the appellants does not cure the situation either. To buttress up that argument she cited two unreported cases of this Court namely, **Kapinga & Company Advocates V NBC Ltd** Civil Appeal No. 42 of 2007 and **Africariers Ltd V Faiz Enterprises Ltd** Civil Appeal No. 60 of 2007.

As regards whether the drawn order should be taken as a decree, she said so long as the effect of the order conclusively determined the matter, then that is a decree. She concluded by saying the appeal is incompetent and prayed the same be struck out with costs.

Responding, the 1<sup>st</sup> appellant on behalf of the 2<sup>nd</sup> appellant and 3<sup>rd</sup> appellant who fended for themselves said they are confused. They asked for the Court's leniency and prayed the objection be dismissed.

In rejoinder Ms. Fatma Karume did not say much. She prayed the appeal be struck out.

In this case the appellants intend to challenge the finding of the High Court in exercising its revisional jurisdiction. They thus filed this appeal. And among the documents filed is the order of the High Court which is not properly dated. The date of the drawn order, as correctly submitted by Ms. Fatma Karume, differs with the date it was delivered. Ms. Fatma Karume appears to have relied on Rule 89 of the Rules that the record of appeal must contain a properly dated order, *inter alia*.

But Rule 89 does not make any specific reference to revisional jurisdiction. It only refers to original and appellate jurisdiction of the High Court. The Rule reads in part thus:-

89 (1) For the purposes of any appeal from the High Court **in its original jurisdiction**, the record of appeal shall, subject...

(2) For the purposes of any appeal from the High Court **in its appellate jurisdiction** the record of appeal shall contain....

Since the aforesaid order arises from revisional jurisdiction of the High Court which is not referred in Rule 89 of the Rules, the question which arises is whether a party who intends to challenge the same is bound in the first place to include such an order in his record of appeal. We have given a deep thought to the matter. We are of the settled view that though the Rules do not expressly state what a record of appeal should contain on matters arising from revisional powers of the High Court, as the case with original and appellate jurisdiction, the documents enlisted under Rule 89 (2) of the Rules pertaining to appellate jurisdiction should equally apply on matters arising from revisional jurisdiction of that court. The reason for saying so is that, unlike original jurisdiction, the two have one common characteristic namely, they deal with decisions arising from the lower courts.

Be that as it may, one of the documents enlisted in Rule 89(2) of the Rules is an order. So, a party who intends to appeal to the Court is bound to include an extracted order in his record of appeal. Time and again the Court emphasizes the need of the record of appeal to contain not only an order/decreed but also with a correctly dated order/decreed (**see Mkama Pastory V Tanzania Revenue Authority Civil Appeal No. 95 of 2006 CAT** (unreported) and **Africariers Case Cited supra**).

From the clear provisions of the law and considering the facts of this case, we find it unnecessary to discuss whether or not the order appealed against is a decree. Suffice to say that a party who intends to challenge the finding of the High Court in exercising its revisional powers has to file his record of appeal containing a properly dated order, *inter alia*.

In this case the appellants, at the time of filing their appeal did not file a correctly dated order. They, however, lodged a supplementary record to rectify the anomaly. But a supplementary record of appeal cannot contain one of the documents enumerated in Rule 89 (2) of the Rules. A supplementary record of appeal

supplements the original record of appeal to include additional or further documents to those enumerated in Rule 89 of the Rules. It cannot, therefore, be rectified by way of filing a supplementary record (**see Kiboro V Post & Telecommunications Corporation [1974] EA 155**)

So, it is clear therefore that the course taken by the appellants in filing a supplementary record is not proper in law. This is the law, there is no room for leniency.

In fine, we are satisfied that the preliminary objection raised has merits. We sustain it and strike out the appeal with costs.

Order accordingly.

DATED at DAR ES SALAAM this 16<sup>th</sup> day of March, 2009.

E.M.K RUTAKANGWA  
**JUSTICE OF APPEAL**

B.M. LUANDA  
**JUSTICE OF APPEAL**

S. MJASIRI  
**JUSTICE OF APPEAL**

I certify that this is a true copy of the original.

P.B. KHADAY  
**DEPUTY REGISTRAR**  
**COURT OF APPEAL**